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REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-EIGHTH SESSION

Report of the Secretary-General

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* A/51/150.

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I. INTRODUCTION

1. On 11 December 1995, the General Assembly adopted resolution 50/45, entitled "Report of the International Law Commission on the work of its forty-seventh session". In paragraph 8 of that resolution, the Assembly noted the suggestions of the International Law Commission to include in its agenda the topic "Diplomatic protection" and initiate a feasibility study on a topic concerning the law of the environment, and decided to invite Governments to submit comments on those suggestions through the Secretary-General for consideration by the Sixth Committee during the fifty-first session of the General Assembly.

2. The Secretary-General, by a note dated 21 December 1995 invited Governments to submit to him, by 30 June 1996, comments pursuant to paragraph 8 of resolution 50/45.

3. As at 12 September 1996, replies had been received from Japan and the United States of America; they are reproduced in section II below. Additional replies will be reproduced as addenda to the present report.

II. COMMENTS RECEIVED FROM GOVERNMENTS

JAPAN

[Original: English]

[29 August 1996]

1. The Government of Japan regrets that the Sixth Committee at its last session failed to express its appreciation for the analysis by the International Law Commission (ILC) of its work programme or endorse its valuable suggestions to include in its agenda the topic "diplomatic protection" and initiate a feasibility study on a topic concerning the law of the environment.

2. As forecast in its report of 1995, the Commission, at its forty-eighth session in 1996, completed the formulation of the Draft Code of Crimes against the Peace and Security of Mankind. It also finished the first reading of the draft articles on State responsibility and will consider the matter again only after a few years have passed and it receives the comments of the Governments of Member States. Accordingly, for at least the first two years of the next quinquennium, the Commission will have a rather light workload, and it should therefore take up the two topics it has suggested, as this would best meet the current needs of the international community.

3. It was unfortunate that the topic of diplomatic protection was selected by the Commission without prior elaboration through the preparation of a synopsis. The Commission has now provided an excellent outline on this matter in its

report on its forty-eighth session in 1996, 1/ which is likely to help persuade Governments to approve it for inclusion in the ILC agenda.

4. As for the study on a topic concerning the law of the environment, the Commission has already provided a detailed outline in document A/CN.4/454 of 9 November 1993 and also nine helpful synopses in paragraphs 506 and 507 of the report of the Commission on its forty-seventh session in 1995. 2/ The Government of Japan shares the view of the Commission that because of the sector-by-sector approach followed to date in the various treaties that have been concluded (in the field of the environment), there is a risk that the need will be lost sight of for an integrated approach to the continuing deterioration of the global environment. It is to be noted that the Commission is proposing at this stage only a feasibility study of the topic so that it might subsequently be in a position to make a recommendation to the General Assembly with respect to its precise scope and content. In the view of the Government of Japan, there is no reason whatsoever to hesitate in approving such a study. As it would be carried out by legal experts on the Commission, it would clarify the problems involved in the development of environmental law, and the Government of Japan therefore sincerely hopes that the General Assembly will endorse it.

UNITED STATES OF AMERICA

[Original: English]

[28 June 1996]

1. The United States wishes to express its appreciation to the International Law Commission for its attention to the development of international law in the field of the environment. There have indeed been many contributions to international environmental law since the 1972 Stockholm Declaration on the Human Environment.

2. We believe, however, that the progressive development of international environmental law would not be well served by an effort to codify generally the "rights and duties of States for the protection of the environment", or to address some more precise topic under that heading. The issues involved in this area are wide-ranging and often controversial. In addition, this area of international law remains relatively young. State practice, in particular, is still evolving and will be shaped by scientific and technical factors, including the extent of scientific certainty regarding the environmental effects of specific practices and the development of alternative, environmentally sound technologies. Moreover, efforts to further develop international environmental law are not lacking within the United Nations system, for example under the aegis of the United Nations Environment Programme (UNEP).

1/ Official Records of the General Assembly, Fifty-first Session, Supplement No. 10 (A/51/10).

2/ Ibid., Fiftieth Session, Supplement No. 10 (A/50/10).

3. The view of the United States is that the progressive development of international environmental law can be most effectively achieved through gr understanding and elaboration of practical and legal strategies that work w in dealing with particular environmental problems. The Global Programme of Action for the Protection of the Marine Environment from Land-based Activit adopted in Washington in October-November 1995, provides a good example of elaboration, with its focus on providing source-specific practical and conceptual guidance for national and regional authorities addressing marine degradation from land-based activities.

4. For these reasons, the United States does not believe that the efforts the Commission would be usefully expended in preparation for future work in area. We would encourage the Commission instead to consider future initiat in areas in which useful results are likely to be possible within a reasona time-frame.